IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6441 OF 1997

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

UTTEHSING GURUDAYALSING RAJPUT

VERSUS

THE STATE OF GUJARAT & ORS.

Appearance:

MR DK NAKRANI for petitioner

MR VM PANCHOLI for respondents

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 19/06/2000

C.A.V. JUDGMENT

#. In the special civil application, prayer has been made by petitioner that the decision taken by respondent No.2 on 27th May 1997 not to grant Non Use Certificate in respect of petitioner's vehicle for the period in dispute be declared illegal, bad in law and perverse. Another

prayer has been made for direction to the respondents not to levy tax on the vehicle of the petitioner for the period from 1.12.95 to 30.9.96 and direct them to issue certificate for vehicle No.GQG-6069 for non using for the said period.

#. However, during the course of arguments, the learned counsel for the petitioner admits that the dispute pertains only for the period from 1.12.95 to 31.3.96 and 1.7.96 to 30.9.96.

#. The petitioner has come up with the case that for the period aforesaid, the vehicle in question was not plied and as such, he is entitled for grant of Non Use Certificate so as to come out of liability to make payment of tax for this period. Mr.Nakarni, learned counsel for the petitioner submits that for this period, all the necessary documents of the vehicle were surrendered to the authority concerned and there are also certificates of the inspection by the authority concerned certifying that on checking the vehicle was found standing at a place where it was reported to be kept. Those certificate are binding on the authorities and the certificate of non use should have been granted for this period.

#. Mr.Pancholi on the other hand submits that where the authority was not satisfied that the vehicle was not plied during a particular period for which non use certificate was sought to be granted as for the period in question the petitioner has failed to produce any cogent and satisfactory evidence for non plying of the vehicle and as such, this prayer made was not granted and accordingly order has been passed. Relying to the provisions of Section 3A of the Bombay Motor Vehicles Tax Act, 1958 and the Rules framed thereunder, Mr.Pancholi contends that grant of Non Use Certificate to the vehicle of the petitioner is not as a matter of course or right. The authority, if satisfied on the basis of material that the vehicle has not been used then only certificate can be granted and not otherwise. In this case, the authority was not satisfied as no material has been produced by the petitioner and the order passed by the authority is perfectly legal and justified to which this court cannot interfere.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Section 3A of the Bombay Motor Vehicles Tax Act, 1958 and in particular sub-section 5 thereof, is relevant for

the purpose of deciding this special civil application and briefly it has to be referred. This provides that where the registered owner or any person having possession or control of a designated omnibus who has paid tax under this section proves to the satisfaction of the Taxation Authority that the designated omnibus in respect of which the tax has been paid has not been used or kept for use for a continuous period of not less than one month, he shall be entitled to the refund of an amount equal to one-twelfth of the annual rate of tax paid in respect of such omnibus for each complete month for the period for which the tax has been paid howsoever except as otherwise provided in clause (b) the total amount of a refund in a year shall not exceed the amount as provided in this section for different categories. Clause (b) of sub-section 5 of Section 3A of the Act aforesaid is also relevant and that reads as under:

(b) Where a registered owner or a person having possession or control of a designated omnibus, who has paid tax under this section proves to the satisfaction of the State Government or such officer not below the rank of the Director of Transport, Gujarat State, as may, by notification in the official Gazette, be authorized in this behalf by the State Government that the designated omnibus in respect of which the tax has been paid has for reasons beyond the control of such owner or person not been used or kept for the use for a continuous period of not less than one month but exceeding three months in a year, he shall be entitled to the refund of an amount equal to one twelfth of the annual rate of the tax paid in respect of such omnibus for each complete month of the period of which the tax has been paid:

Provided that for the purpose of determining the amount of refund under this clause only such of the period in which a designated omnibus has not been used or kept for use shall be taken into account as comprises of complete months.

#. The respondents filed reply affidavit on the record of the special civil application. I do not find that any rejoinder to the same has been filed by petitioner. The learned counsel for the petitioner has also not stated that rejoinder to the reply has been filed. So whatever averments made by respondents in the reply to the special civil application, re.: factual aspect, stand uncontroverted. If we go by this reply, I find that for

the period from 1.12.95 to 31.12.95, the declaration of Non Use was made by petitioner on 30.11.95. Though this declaration has been made, the petitioner has not mentioned any reason whatsoever for non use of the vehicle. Same is the case for the period from 1.1.96 to 31.1.96 and 1.2.96 to 29.2.96. In the absence of any reasons mentioned for the aforesaid period, I fail to see any justification in the claim of the petitioner for grant of Non Use Certificate for this period by the authority. So far as the period 1.3.96 to 31.3.96 is concerned, the petitioner has mentioned the reason as Garage work, but it is too vague a ground to accept. What was the garage work to be undertaken by petitioner and what for such a long period has been taken has not been explained nor any satisfactory evidence has been produce even before this court for its satisfaction. If on such flimsy and bald grounds Non Use Certificate is granted, then it will be very convenient and easy for the motor vehicle owners to evade tax liability. Only in a case where the authority is satisfied that the vehicle remained in non use beyond the control of registered vehicle owner, then only the same is to be granted and not otherwise. Similar is the case for the period 1.6.96 to 30.9.96 where the petitioner has made very vague and flimsy ground for grant of Non Use Certificate. The ground given is repairing. I fail to see in absence of any cogent evidence and other material how far it is justified for non plying of the vehicle for three months. This is nothing but only an attempt on the part of the petitioner to save himself from the payment of tax which cannot be permitted by the court. This is wholly a misconceived writ petition and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.500/= as costs of this special civil application to the respondent-State.

(S.K.Keshote, J.)

(sunil)